1929 911

Department of Lyttelton

OFFICE Board of Rev

STATION Telegram

Mis No. 1855

Dated 27.6.29

Date Initial

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(SUBJECT.)

Sec (S. Nacca) Tuthill Dtd —

05. 135/29 — assessment —

Cancellation — Nacca — sanctioned

* Not to be filled in in the case of permanent records

Ref.on A3-3429-29.

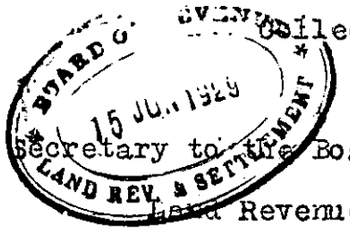
South Kanara Collector's Office,
Mangalore, 9th June 1929.

From

G. W. Wells, Esquire, M.A., I.C.S., A/1985
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue & Settlement,
M a d r a s.



Sir,

Suits - (South Kanara District) - Puttur District Munsif's Court - O.S.No.139/29 - Defence - sanction sought.

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I enclose a copy of plaint filed by the Right Reverend Dr. Valerian Joseph D'Souza, Bishop of Mangalore, against the Secretary of State and two others.

2. The suit is for a declaration that plots S.No. 176/2 & 3 of Beltangadi village, Puttur Taluk, belong to and vest in the Plaintiff by right of purchase from their origin assignee Ganapathi Shanbhogue and that the cancellation of t assignment of the said plots by the 1st Defendant (Governmen and their re-assignment to the 2nd Defendant Rama Naika by Collector's order dated 1st May 1927 is wrongful, ultra vires illegal and invalid and for recovery of possession of the plots from the 2nd Defendant and for other reliefs.

3. The history of the case was briefly dealt with by Mr. Gawne in his order D.Dis.187-27, dated 1st May 1927 and the facts were also reported to the Board in connection with the Plaintiff's revision petition in this office Refce.No. A1-7224-27, dated 28th October 1927 on which the Board passed its orders B.P.Routine No.122, dated 7th January 1928 dismissing the revision petition. Plaintiff subsequently file memorial to Government who declined to interfere on behalf o the Plaintiff. Please see G.O.No.Mis.2379 Rev.Dept., date 9th October 1928 communicated with B.P.Routine No.6694, dat

15th October 1928. The Plaintiff thereupon sent a suit notice which I recorded on 29th November 1928.

4. It will be clear from the records of enquiry that there is absolutely no illegality in the order passed by the Collector, Mr. Gawne in his D.Dis.187/27, dated 1st May 1927 (o) cancelling the assignment of the plaint plots to Ganapathi Shanbhogue and directing their assignment to the 2nd Defendant Rama Naika who has been actually occupying the land after building a house. The order was passed by the Collector in the exercise of his revisional jurisdiction and Civil Courts can have no jurisdiction to question the orders passed by Revenue Officers acting within the scope of their authority. The Plaintiff's suit is thus frivolous. I therefore request that the Board may be pleased to accord sanction for the defence of the suit and to approve the enclosed draft written statement prepared by the Vakil, Puttur and passed by the Government Pleader, Mangalore.

5. I received the notice of suit from the District Munsif on 7th April 1929. The suit stands posted to 15th July 1929.

6. The records noted in the margin are enclosed.

1. Copy of plaint.
2. Copy of draft written statement. } occur
3. Huzur File D.Dis.187-27, dated 1-5-27.
4. " " D.Dis.4052-27, dated 20-5-27.
5. " " D.Dis.7224-27, dated 20-1-28.
6. " " D.Dis.1840-28, dated 26-10-28.
7. " " D.Dis.10638-28, dated 29-11-28.
8. D.R.69/33 of Beltangadi Deputy Tahsildar.
9. Dis.8 R/Rev.28 Do.
10. D.R.84/31 Do.
11. L.Dis.C.C.885/27 of Divisional officer, Puttur.

Your obedient servant,

H. Sankara

For Collector.

11.6.29.

M.D'S.11/6.

In the Court of the District Munsif of Puttur.

O.S.139/29.

Between:-

The Roman Catholic Diocese of Mangalore — Plaintiff.

The Secretary of State for India in Council and others. | Defendants.

Written statement of 1st defendant under Order 8 Rule 1.

The 1st defendant states as follows:-

1. The plaintiff's suit is unjust, frivolous and unsustainable at law.

2. The plaint land appertaining to S.No.176/2,3 of Beltangady village was originally pure Government waste and as such the Revenue authorities were entitled to grant it to whomsoever they pleased and the plaintiff is not entitled to question such grant.

3. The 2nd defendant first occupied the plaint land,lived there, built a house and made other improvements worth in all about Rs. 400/-. Accordingly the land was offered to him on darkhast and the Deputy Tahsildar of Beltangady issued a notice C.1. to him asking him to pay the seigniorage amount of an anna and subsequently another notice to appear and pay the seigniorage amount. As it was made to appear that 2nd defendant refused to accept service of both the notices, the Deputy Tahsildar of Beltangady assigned the said land to Ganapathi Shanbhogue by his -- order in D.R.69/1333.

4. Subsequently in an application filed by 2nd defendant the Collector held a local inspection and an enquiry and as he found that the endorsements on both the notices purporting 2nd defendant to have refused service were false, fraudulent and -- collusive, the 2nd defendant being illiterate and as the grant to Ganapathi Shanbhogue was also grossly inequitable, he cancelled the assignment made by the Deputy Tahsildar and granted the plaint land to 2nd defendant who was found to be best entitled in the -- circumstances of the case. The Collector in the exercise of -- revisional jurisdiction under the revenue rules, was perfectly competent and within his powers in cancelling the original assignment and granting the plaint land to 2nd defendant.

5. Further the transfer of the plaint land by Ganapathi

Shanbhogue to plaintiff was opposed to the terms of the darkhast order and to the condition laid down in B.S.O. 15(19) subject to which the darkhast was made. The assignment to Ganapathi Shanbhogue was liable to be set aside on that ground also and it was therefore rightly set aside. The transfer to plaintiff is ipso facto invalid and plaintiff derives no right to the plaint land under such transfer.

6. This defendant contends that plaintiff is an alien institution with a Non-British subject at its head controlling and managing its affairs at the time of darkhast proceedings.

7. The Collector before cancelling the Deputy Tahsildar's order, and granting the plaint land to 2nd defendant, had issued a notice to Ganapathi Shanbhogue the alleged vendor of the plaintiff. The plaintiff having no locus standi in the matter was not entitled to any notice.

8. As the Deputy Tahsildar's order assigning the plaint land to Ganapathi Shanbhogue was brought about as the result of collusio and fraud practised upon 2nd defendant who is poor and illiterate and as the grant was found to be grossly inequitable it was liable to be cancelled by the Collector in the exercise of his revisional jurisdiction within the period allowed by the rules.

9. This defendant denies that the judgment in O.S.429/28 of this court operates as res-judicata or estoppel, this defendant was only a formal supplemental defendant with no relief claimed against him. The plaintiff came in as supplemental plaintiff -- therein without notice to this defendant who was unaware of the transfer of right to plaintiff.

10. This judgment cannot in any way supersede or override the revisional powers vested in the Collector.

11. This defendant is not aware of the delivery proceedings in R.E.P. 1349/26 or of the lease taken from 2nd defendant as --- alleged in the plaint.

12. The plaintiff has no right or cause of action to bring this suit against this defendant.

13. Civil Courts have no jurisdiction or power to adjudicate upon the validity or otherwise of the assignment of Government land

14. The buildings and improvements in the plaint land ---

are underestimated. The court fee paid is not correct.

15. The plaintiff is not entitled to the declaration -- sought or any other relief.

16. All other allegations of the plaint which are not expressly admitted herein, are denied.

17. This suit may therefore be dismissed with costs of this defendant.

True Copy.

for Collector.

In the Court of the District Munsif of Puttur.

O.S.No. 139 of 1929.

Between

The Roman Catholic Diocese of Mangalore, represented by its Bishop, the Right Reverend Doctor Valerian Joseph D'Souza.	Plaintiff.

and

1. The Secretary of State for India in Council. 2. Rama Naika. 3. David Lobo.	Defendants.

Plaint under Section 26, Order VII of the C.P.C.

The Plaintiff above named states as follows.

I. The Plaintiff is the Roman Catholic Diocese of Mangalore and is represented by its Bishop, the Right Reverend Doctor Valerian Joseph D'Souza, residing at Kodialbail, Mangalore Town. The address of Plaintiff for service of all the notices and processes is as stated above.

II. The 1st Defendant is the Secretary of State for India in Council and is represented by the Collector of South Kanara. The 2nd Defendant is the son of Venkatesh Naika and the 3rd Defendant is the son of Kaithan Lobo. Defendants 2 and 3 reside in Beltangady Kasba village, South Kanara District.

III. (1) The plots of land described in Schedule A below, viz., S.F.Nos. 176/2 and 3 of Beltangady village along with certain other survey fields of the said village were purchased for and on behalf of the Diocese of Mangalore by its then Administrator, the Right Rev. Doctor Paul Perini of the Society of Jesus from one Kudige Ganapathy Shanbhogue under sale deed dated 27th March, 1926.

(2) That the said S.F.Nos. 176/2 and 3 aforesaid had along with certain other plots of land been granted to the vendor on darkhast in D.R.case No. 69 of 1333 on the file of the Deputy Tahsildar of Beltangady, South Kanara District on collection of seigniorage in respect of the tree growth thereon. The said

grant was made subject to the condition that "if the land is alienated without the sanction of Government in favour of any person other than a British subject or a subject of a Native State, the grant shall thereupon become null and void."

(3) That at the time of the execution of the sale deed aforesaid there was pending O.S.No. 429 of 1925 on the file of this court instituted by the said Kudige Ganapathy Shanbhogue against the 1st and 2nd Defendants herein for recovery of possession of portions of the said plots of land S.F.Nos. 176/2 and 3 more fully described in Schedule B hereto and for past and future mesne profits in respect of the same. The said suit was after the date of the sale deed aforesaid prosecuted by the said the Right Reverend Doctor Paul Perini of the Society of Jesus as supplemental Plaintiff on behalf of the Diocese of Mangalore and the same was decreed in his favour on 11-6-1926, this court finding that the grant in favour of Kudige Ganapathy Shanbhogue, the 1st Plaintiff in that suit is a valid one and that the said Rama Naika, 1st Defendant in that suit and 2nd Defendant herein is not entitled to question it.

(4) In execution of the decree passed in the said suit R.E.P.No. 1349/1926, possession of the said plots of land described in Schedule B with the buildings thereon was delivered over to the Reverend Father M.S. Fernandes, the Vicar of the Roman Catholic Church at Beltangady for and on behalf of the supplemental 2nd Plaintiff in the suit on 6-12-1926 and the said plots with the buildings thereon were taken on lease by the 3rd Defendant herein who is the Sacristan of the said Beltangady Church and he sub-leased the same to 2nd Defendant in this suit. The 2nd Defendant also executed a chalgeni lease on the same day to the 3rd Defendant. The 2nd Defendant is in actual possession of the said plots of land ever since the date of the said lease, his possession at its inception having been that of a tenant. The period of the lease and of the sub-lease has expired.

(3) Subsequently on the petitions filed by the 2nd Defendant, the Collector of South Kanara by his proceedings dated the 1st day of May 1927 cancelled the assignment of the said plots S.F.Nos. 176/2 and 3 made to Kudige Ganapathy Shanbhogue, without notice to the Plaintiff and reassigned the same to the 2nd Defendant although the Collector was then aware of the sale deed in favour of the Diocese. The subsequent petitions filed by the Administrator Apostolic and the Bishop of the Diocese, to the Collector of the District and to the Board of Revenue for redress in the matter have been in vain. The Collector by his proceedings dated 20-5-1927 simply recorded the objection petition filed by the Administrator Apostolic and informed him "that the Revenue Department does not recognise him as having a valid title to the lands in question as they were acquired in spite of an express condition in the vendor's patta that the land might not be sold to a non-British subject." The Board of Revenue by their proceedings Routine No.122 dated 7-1-1928 upheld the Collector's orders holding that the Collector was within his powers in cancelling the assignment in revision and that the Administrator Apostolic had no locus standi to question it as the sale of the land to him was opposed to the terms of the grant.

(6) The Plaintiff submits that after the decision in the aforesaid O.S.No. 429 of 1925 to which both the 1st and 2nd Defendants were parties, and which the 1st Defendant herein allowed to proceed against him ex parte, it is not open to the 1st Defendant to cancel the assignment of the plots made to Kudige Ganapathy Shanbhogue in revision either on the alleged ground of fraud and collusion or on grounds of equity or on the ground that the Administrator-Apostolic had no locus standi because the sale to him was contrary to the terms of the grant. The 1st Defendant herein who was a party to the said suit and decree ought to have put forward all the objections to the passing of the decree either on

the ground of any defect in the original grant in favour of Kudige Ganapathy Shanbhogue or in the assignment in favour of the Plaintiff or by reason of the determination of the grant in favour of Kudige Ganapathy Shanbhogue on account of the assignment in favour of the Plaintiff, in the suit itself and having failed to do so is barred and estopped by the Judgment in the said suit from raising these questions again. The decision in the said suit that there was no fraud or collusion in the matter of the assignment of the said plots to the original assignee is also res judicata against the defendants. The 2nd Defendant having also got into possession under the 3rd Defendant as the tenant of the latter is estopped from disputing the title of the Plaintiff to the said plots of land and from claiming the same for himself.

(7) The Plaintiff submits that the ground assigned for the cancellation, viz., that the sale thereof to the Administrator Apostolic contravened the terms of the grant is wholly untenable. In fact, the 1st Defendant cancelled the assignment by the order dated 1st May 1927 on other grounds mentioned in the said order and subsequently assigned this ground as justfying the order. The Plaintiff submits that the Roman Catholic Diocese of Mangalore which is confined to the territorial limits of South Kanara is a purely indigenous institution and the Canon Law which governs its constitution and must form the rule for guidance of British Indian Courts either as custom having the force of law or as a rule of justice, equity and good conscience, has attributed to it a legal personality with the capacity of acquiring and holding property. The Diocese as an institution and conceived as such legal person or corporation or even viewed as religious association of persons or as a religious trust is a British subject and the transfer to such a person can in no sense be said to infringe the terms of the grant. The nationality of the Bishop or the Administrator is a wholly irrelevant circumstance to judge of the nationality and character of the institution which is purely Indian. Any way, Plaintiff

submits there has been in this case no transfer to a person who is not a British subject or a subject of a Native State within the meaning of the said grant. The said sale deed was taken in the name of the Administrator Apostolic for and on behalf of the Diocese of Mangalore and with funds belonging to the Diocese. The contention of the 1st Defendant that the Roman Catholic Diocese of Mangalore is a foreign body is neither sound nor well founded and is altogether erroneous and untenable in law.

(8) Even if the condition has been broken by such assignment, it was not within the competence of the Collector to terminate such grant and his act is ultra vires.

(9) Plaintiff also begs to submit as regards the order in revision that the conditions necessary for the exercise of the power of the Collector under Board's Standing Order 15 Rule 17 are non-existent in this case and the order of the cancellation of the grant is wholly ultra vires and invalid.

(10) On 19th November 1928 a registered notice was sent by the Right Reverend Valerian Joseph D'Souza, Bishop of Mangalore, for and on behalf of the said Diocese, to the Collector of South Kanara urging the above contentions and claiming the reliefs mentioned below. The said notice was delivered to the 1st Defendant's representative, the Collector of the District on 23-11-1928 and as the demand has not been complied with, this suit has been instituted for the reliefs mentioned below. The cause of action for this suit arose in Mangalore on 1-5-1927 when the Collector cancelled the assignment without notice to the Plaintiff and on 9-10-1928 when the first Defendant finally refused to recognise the Plaintiff's right to the said plots. The 2nd Defendant is not entitled to any notice to quit as he has denied the title of the Plaintiff and of the 3rd Defendant and the period of the lease has expired. The 3rd Defendant who was practically an agent of the Plaintiff in the matter of the letting of the property mentioned in Schedule B to the 2nd Defendant is impleaded so that there may be a final decision between the parties concerned.

IV. The Plaintiff values the reliefs sought for at Rs.51-14-0 for purposes of jurisdiction and court fees.

V. The Plaintiff prays for a decree against Defendants for the following reliefs.

(1) Declaration that the property described below in Schedule A belongs to and vests in the Plaintiff --- by right of purchase from the assignee Kudige -------- Ganapathy Shanbhogue and that the cancellation of the-- assignment of the said plots of land by the 1st Defendant and their re-assignment to the 2nd Defendant by his order dated 1-5-1927 is wrongful, ultra vires, ---- illegal and the same is not valid and binding on the -- Plaintiff and for recovery of possession of the said property from the 2nd Defendant. This relief is valued at 10 times the assessment (Rs.0-8-0) amounting to Rs.5 and value of buildings, Rs.40. Total 45-0-0

(2) that the 2nd Defendant may be directed to pay compensation for use and occupation or mesne profits at Rs.3 per annum from 6-12-1926 up to date. 6-14-0

Total. Rs.51-14-0

(3) that the 2nd Defendant may be directed to pay future mesne profits at the above rate till delivery of possession.

(4) Directing the Defendants 1 and 2 to pay the costs of the suit with interest thereon at 6 per cent from date of decree till payment.

And such other and further reliefs as to this Court may seem fit under the circumstances of the case.

Mangalore,
23rd.March 1929.

Sd/- V.J.D'Souza.
Plaintiff.

Pleader for Plaintiff.

I declare that the facts stated above are true to my knowledge.

Mangalore,
23rd.March,1929.

Sd/- V. J. D'Souza,
Plaintiff.

12

Schedule of property.

Schedule A.

Property situated wit in the Registration Sub-District of Beltangady in Beltangady village, Puttur Taluk, South Kanara District

S.F.No. 176/2 Punja 1 ac. 1c. assessed at Re.0-6-0

" 176/3 " - 34 Re.0-2-0

Schedule B.

Eastern portion measuring 2 cents assessed at one anna from S.F.No. 176/2 aforesaid.

Northern and western portion measuring 30 cents assessed at annas 2 from S.F.No. 176/3 aforesaid with one thatched house building and two thatched out-houses.

Mangalore,
~~25th~~ March, 1929.

Sd/- V.J. D'Souza,
Plaintiff.

(True copy)

mon
11.6.29

Sd/- P.D.Souza,
Vakil for Plaintiff.

List of records sent to the Board of Revenue, Madras with Collector's letter Ref.on A3-3429-29, dated 9th June 1929.

****

1. Copy of plaint.
2. Copy of draft written statement.
3. Huzur File D.Dis.187/27, dated 1-5-1927.
4. " D.Dis.4052-27, dated 20-5-27.
5. " D.Dis.7224-27, dated 20-1-28.
6. " D.Dis.1840-28, dated 26-10-28.
7. " D.Dis.10638-28, dated 29th Nov.1928.
8. D.R.69/33 of Beltangadi Deputy Tahsildar.
9. Dis.8 R/Rev.28 Do.
10. D.R.84/31 Do.
11. L.Dis.C.C.885/27 of Divisional Officer, Puttur.

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M.D'S.11/6.

11.6.29

Bd 15.7.29

Subject.—

R. F. XXII-A-19—28 004—21-1-29 (6).

FOR MEMBER.

Suits (S. Kanara). Purchase of O.T. 139/29 - assignment - Cancellation - Refund - Sanction of

READ AGAIN B. P. No. _____, dated _____ 192 .

" " " _____, " _____ 192 .

READ ALSO :—

Register No. _____, From the A 1985/29, No. _____, dated _____ 192 .

" _____, " " _____, " _____, " _____ 192 .

" " _____, " " _____, " _____, " _____ 192 .

RESOLUTION. (Secret) No. 1855, dated 29.6. 1929.

The Bd sanctions the refund of the suit deposit as appears the draft letter to Govt. statement submitted by the Collr.

BV 29/6

Sd. 29/6/29

Dy. Secy. to Govt. Jagannayakulu 30.6.29

To the Collr S. Kanara
with records returned
(attached)

15. 7. 29.

M1
S
AS

Suits (S. Kanara) Puttur D.M. O.S 139/29 –
Assignment - Cancellation - Defence
A 1985/29

To AS.

The W.S. proposed to be filed on behalf of Govt. at pages 3-5 c/f is for perusal.

It is for orders whether para 6 may stand. It is contended that the pff. (Diocese of Mangalore) is an alien body with a non British Subject at its head Controlling and Managing its affairs at the time of the darkhast proceedings. This does not seem to be correct since the diocese will change its nationality according to the nationality of the Occupant of the See. Further it betrays ignorance of the Canon Law. Under the latter the powers of the local Bishop are circumscribed, specially in dealings with immovable property.

Para 5 also is for consideration. The pff is regarded as an alien body. It is submitted that this too is not correct. If the contention were correct, it will make the Churches of Rome, an alien body in every country. The local Churches are capable of acquiring and administering properties and they derive their character from the country where they are situated.

The position taken up in the W.S. is apparently based on G.O. No. 1888 Rev dt 14.8.05. (9(1)) Here again there seems to have been some misapprehension regarding the word "vesting". Under the Canon Law Ecclesiastical Churches situated they properties vests.